

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:LM:FSH:MAN:2:TL-N-207-01

JWFogelson

date:

to: Henry V. Singleton, Territory Manager
Territory 1100, Group 1146
Attention: Larry Wolfson, Revenue Agent

from: Area Counsel (Financial Services and Healthcare)

subject:

██████████
The Trusts That Were Its Shareholders
The Beneficiaries of the Trusts
The Distributees and Transferees of ██████████ and the Trusts
Tax Year: ██████████
Forms 872
Earliest Statute of Limitations on Assessment Expiration Date:
██████████ (██████████)

U.I.L. Nos. 6501.01-06, 6501.08-09, 6501.08-10, 6501.08-11,
6501.08-12, 6501.08-17, 6901.03-01, 6241.00-00R96

DISCLOSURE STATEMENT

This advice may contain return information subject to I.R.C. § 6103. This advice may contain confidential information subject to the attorney-client and deliberative process privileges and, if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the Examination or Appeals recipients of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination or Appeals personnel or persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. This advice is advisory and does not resolve Service position of an issue or provide the basis for closing a case. The determination of the Service in this case is to be through the exercise of the independent judgment of the office with jurisdiction over the case.

This advice is in response to your request for assistance in the above-captioned matter regarding the issues set forth below related to (i) the taxable year of the S corporation [REDACTED] ("[REDACTED]") beginning [REDACTED] and ending [REDACTED], (ii) the [REDACTED] trusts that were [REDACTED]'s shareholders during [REDACTED], (iii) the [REDACTED] new trusts into which one of those [REDACTED] original trusts (the trust that had been for the primary benefit of [REDACTED] [REDACTED] (hereinafter "[REDACTED]'s Trust")) was subsequently divided, and (iv) the [REDACTED] individuals ([REDACTED], [REDACTED] [REDACTED], and [REDACTED] [REDACTED] who during [REDACTED] were the only income beneficiaries of the [REDACTED] original trusts. For purposes of this memorandum, (i) each of the original [REDACTED] trusts and the [REDACTED] new trusts created as a result of the division of [REDACTED]'s Trust is hereinafter referred to as a "Trust" and (ii) [REDACTED], [REDACTED], and [REDACTED] are each hereinafter referred to as an "Individual."

ISSUES

1. In order to protect the I.R.C. §§ 6501 and 6901 statutes of limitations on assessment with respect to all possible adjustments related to [REDACTED]'s [REDACTED] tax year, is it now necessary to:

(i) to secure a Form 872, Consent to Extend the Time to Assess Tax, from [REDACTED], each Trust and each Individual, and

(ii) secure a Form 977, Consent to Extend the Time to Assess Liability at law or Equity for Income, Gift & Estate Tax, from any taxpayer?

2. As a result of [REDACTED]'s dissolution under New York law in the year [REDACTED], who is now authorized to execute a Form 872 on behalf of [REDACTED] for its [REDACTED] tax year?

3. What language should be included in any Form(s) 872 to be secured from the Trusts and Individuals to restrict the effect of the extensions of the statute of limitations on assessment to only adjustments related to [REDACTED]'s [REDACTED] tax year?

CONCLUSIONS

1. In order to now protect the I.R.C. § 6501 statute of limitations on assessment with respect to any adjustments related to [REDACTED]'s [REDACTED] tax year, a Form 872 should be secured from [REDACTED], each Trust and each Individual. However, because I.R.C. § 6901(c)(1) provides that the period of limitations on assessment of a transferee for the income tax liability of its transferor does not end until one year after the expiration of

I.R.C. § 6501 period of limitations on assessment for the transferor, it is not now necessary to secure a Form 977 from any transferee of [REDACTED] or a Trust with respect to the transferee's liability for its transferor's [REDACTED] tax liability.

2. During the period that [REDACTED] is deemed under New York law to be winding up its affairs, any authorized officer of [REDACTED] is authorized to execute a Form 872 on behalf of [REDACTED] for its [REDACTED] tax year. While New York law is not entirely clear, we believe that such period will not end prior to the end of the Service's audit of [REDACTED]. Accordingly, we now suggest that you obtain a Form 872 for [REDACTED]'s [REDACTED] tax year signed by an officer of [REDACTED] who you determine is authorized to sign a Form 872 on its behalf.

3. Suggested language to be included in the Forms 872 to be secured from the Trusts and Individuals under I.R.C. § 6501 to restrict the effect of the statute extensions is set forth below on pages 12 and 13.

FACTS

This opinion is based on the facts set forth herein. It might change if the facts are determined to be incorrect. If the facts are determined to be incorrect, this opinion should not be relied upon. You should be aware that, under routing procedures which have been established for opinions of this type, we have referred this memorandum to the Office of Chief Counsel for review. That review might result in modification to the conclusions herein. We will inform you of the result of the review as soon as we hear from that office, which should be in approximately ten days. In the meantime, the conclusions reached in this opinion should be considered to be only preliminary.

[REDACTED] (Federal E.I.N. [REDACTED]), a New York corporation formed in accordance with the [REDACTED], filed a U.S. Income Tax Return for an S Corporation (Form 1120S) for its [REDACTED] tax year. [REDACTED]'s [REDACTED] Form 1120S indicated that [REDACTED] was incorporated on [REDACTED] and first elected to be an S Corporation effective [REDACTED], i.e., for its [REDACTED] tax year. Accordingly, [REDACTED] was a C corporation for its earlier tax years. [REDACTED]'s [REDACTED] Form 1120S indicates that during [REDACTED] the [REDACTED] original Trusts were [REDACTED]'s only shareholders. [REDACTED]'s counsel has represented that during [REDACTED] the Individuals were these Trusts only income beneficiaries. [REDACTED] died in [REDACTED]. [REDACTED]'s counsel has represented that as a result of her death, [REDACTED]'s Trust was divided in accordance with its terms into two new Trusts. You indicated that the Trusts intend to file federal tax returns for their [REDACTED] tax years.

The I.R.C. § 6501 statute of limitations on assessment for [REDACTED]'s [REDACTED] tax year is scheduled to expire on [REDACTED]. This is the earliest scheduled expiration date of an I.R.C. § 6501 statute of limitations on assessment for the [REDACTED] tax year of any of these taxpayers.

During [REDACTED] and thereafter [REDACTED] carried on a [REDACTED] [REDACTED]. During [REDACTED] or [REDACTED], [REDACTED] sold its [REDACTED] to [REDACTED] [REDACTED] ("[REDACTED]").

[REDACTED]'s counsel has represented that, because the sale to [REDACTED] involved the sale of more than [REDACTED]% of [REDACTED]'s assets, [REDACTED] was required under [REDACTED] to commence proceedings immediately after the sale to liquidate its business under court supervision. On [REDACTED], a New York court entered an Order of Dissolution with respect to [REDACTED]. The Order of Dissolution stated that the court had signed a closing order dated [REDACTED] declaring the business of [REDACTED] closed and directing [REDACTED] to "wind up its affairs." The Order of Dissolution also stated that [REDACTED] is "hereby declared to be dissolved and its status as a banking organization is hereby declared to be terminated" and that "[u]pon the filing of a certified copy of this Order with the [REDACTED], the Company shall cease to exist." On [REDACTED], a certified copy of the Order of Dissolution was filed with [REDACTED].

[REDACTED]'s counsel has represented that, pursuant to a Redemption Agreement and a Stock Purchase Agreement, both dated as of [REDACTED], (i) [REDACTED] redeemed some of its shares owned by [REDACTED]'s Trust (which Trust was then divided in accordance with its terms into two new Trusts), and (ii) the five remaining Trusts transferred all of the remaining outstanding [REDACTED] shares to [REDACTED] [REDACTED] (hereinafter "[REDACTED]") in exchange for [REDACTED] of the [REDACTED] outstanding shares of [REDACTED]. While [REDACTED]'s counsel has not represented that the remaining [REDACTED] shares of [REDACTED] were owned by the Trusts, it appears that this was the case. [REDACTED]'s counsel has also represented that [REDACTED] distributed its remaining assets, consisting primarily of the assets of its [REDACTED], to its new sole shareholder, [REDACTED].

The Stock Purchase Agreement indicates that at the time it was executed the trustees of [REDACTED] of the Trusts were [REDACTED], [REDACTED], [REDACTED] and [REDACTED]. The Agreement indicates that the trustees of the [REDACTED] were [REDACTED] and [REDACTED]. [REDACTED] is [REDACTED]'s attorney. We do not know who [REDACTED] is.

DISCUSSION

1. From whom should Forms 872 and 977 be secured in order to now protect the statutes of limitations on assessments resulting from any adjustments related to [REDACTED]'s [REDACTED] tax year?

Statutes of Limitations

I.R.C. § 6501(a) provides generally that the amount of any tax shall be assessed within three years after the return was filed. I.R.C. § 6501(c) (4) authorizes a taxpayer and the Service to agree in writing, at any time prior to the expiration of the statutory period, to extend the period. A Form 872, Consent to Extend the Time to Assess Tax, is used to so extend the period.

I.R.C. § 6901(a) (1) (A) provides, with respect to income tax, that the liability, at law or in equity, of a transferee of property shall be assessed in the same manner as the original income tax liability. I.R.C. § 6901(h) provides that the term "transferee" includes a distributee. Treas. Reg. § 301.6901-1(b) further provides that the term "transferee" includes the shareholder of a dissolved corporation.

The existence and the extent of the transferee liability are determined under the law of the state in which the transfer occurred. See Burns v. Commissioner, T.C. Memo. 1989-395, citing Commissioner v. Stern, 357 U.S. 39 (1958). Under New York state law, the shareholder of a dissolved corporation is liable as a transferee for the corporation's income taxes. See Satnick v. Commissioner, T.C. Memo. 1978-289; Kreps v. Commissioner, 351 F.2d 1 (2d Cir. 1965). Thus, [REDACTED] is a transferee of [REDACTED]. [REDACTED]'s Trust may also be a transferee of [REDACTED] because [REDACTED] redeemed a portion of the [REDACTED] shares owned by [REDACTED]'s Trust. In addition, the [REDACTED] new Trusts formed on the division of [REDACTED]'s Trust may also be transferees of [REDACTED].

I.R.C. § 6901(c) provides, in part, that the period of limitations for assessment of a transferor's income tax liability against a transferee shall not expire until one year after the expiration of the period of limitation for assessment against the transferor. I.R.C. § 6901(d) authorizes a distributee and the Service to agree in writing, at any time prior to the expiration of the statutory period, to extend the period. A Form 977, Consent to Extend the Time to Assess Liability at Law or Equity for Income, Gift & Estate Tax, is used to extend this statute of limitations.

S Corporation Corporate Level Tax

I.R.C. §§ 1361 through 1379 provide that the income of an S corporation is generally taxed at the shareholder level, rather than at the corporate level. However, pursuant to I.R.C. §§ 1374 and 1375, corporate level taxes are imposed on certain S corporation income. These corporate level taxes can apply to an S corporation only if the S corporation had earlier been, as was [REDACTED], a C corporation.

I.R.C. § 1374(a) imposes an S Corporation corporate level tax on an S corporation's "built-in gains" recognized during the S corporation's "recognition period." I.R.C. § 1374(d)(1) defines an S corporation's "net unrealized built-in gains" as

the amount (if any) by which -

(A) the fair market value of the assets of the S corporation as of the beginning of its 1st taxable year for which an election under section 1362(a) is in effect, exceeds

(B) the aggregate adjusted bases of such assets at such time.

I.R.C. § 1374(d)(7) defines generally an S corporation's "recognition period" as "the 10-year period beginning with the 1st day of the 1st taxable year for which the corporation was an S corporation."

[REDACTED] may be subject to I.R.C. § 1374's corporate level tax on an S corporation's "built-in gains" recognized during the S corporation's "recognition period." This is because (i) [REDACTED] may have had net unrealized built-in gains as defined in I.R.C. § 1374(d) on [REDACTED], the day its S corporation election first became effective, and (ii) if, during its [REDACTED] tax year, [REDACTED] disposed of any assets with respect to which it had net unrealized gains because such disposition would necessarily have occurred during [REDACTED]'s "recognition period" as defined in I.R.C. § 1374(d)(7), i.e., within 10 years of [REDACTED].

I.R.C. § 1375 also imposes an S corporation corporate level tax if an S corporation (i) has at the end of the relevant taxable year accumulated earnings and profits from when it was a C corporation, and (ii) has during the taxable year gross receipts more than 25% of which are passive investment income.

■ may also be subject to I.R.C. § 1375's S corporation corporate level tax for its ■ tax year. This is because on ■ ■ may have had accumulated earnings and profits from when it was a C corporation (i.e., prior to ■), and more than ■% of ■'s gross receipts during its ■ tax year may have been passive investment income.

We cannot now determine whether the special S corporation corporate level taxes imposed by I.R.C. §§ 1374 and 1375 apply to ■ for its ■ tax year. Either or both special corporate level taxes may apply. As a result, we suggest that you protect the statute of limitations on assessment of ■ itself related to these taxes by securing a Form 872 from ■ for its ■ tax year. (Securing this consent will also protect the statute of limitations applicable, in the event ■ was not actually eligible to be an S corporation for its ■ tax year, to assessment of ■ for the "regular" C corporation income tax imposed under I.R.C. § 11 for that year.)

As is discussed in depth below in connection with Issue 2, New York law is not entirely clear regarding the period during which ■ will be deemed to be winding up its affairs. While we believe that ■'s winding up period will end no earlier than the end of the Service's ■ audit, we cannot state with absolute certainty that this will be the case. Accordingly, we suggest that you obtain Forms 977 from ■, ■'s Trust and the two new Trusts into which ■'s Trust was divided in order to protect the statute of limitations on assessment applicable to their liabilities as transferees of ■'s assets. These Forms 977 may be obtained now. Alternatively, because the statute of limitations under I.R.C. § 6901 on any transferee liability with respect to ■'s ■ tax liability will expire no earlier than one-year after the original expiration date of I.R.C. § 6501's statute of limitations on assessment of ■ for its ■ tax year, you may defer obtaining these Forms 977 until the one-year anniversary of that original expiration date approaches. Because I.R.C. § 6902(a) places the burden of proving transferee liability on the Service, we suggest that, at the time you obtain a Form 977 from a transferee, you also obtain from the transferee a Form 2045 (Transferee Agreement) acknowledging that it is a transferee.

S Corporation Shareholder Level Tax

The "regular" S corporation tax imposed under I.R.C. §§ 1361 through 1379 is imposed at the shareholder level, rather than at the corporate level. I.R.C. §§ 6241 through 6245 (repealed effective for tax years beginning after December 31, 1996 by P.L. 104-188, § 1307(c)(3)(C)) provide TEFRA corporate level audit

procedures for S corporations similar to the TEFRA partnership level audit procedures set forth in I.R.C. §§ 6221 through 6234. No similar corporate level audit procedures are in effect for S corporations for tax years beginning after December 31, 1996. Because [REDACTED]'s [REDACTED] tax year began on [REDACTED], the TEFRA corporate level S corporation audit procedures do not apply. Therefore, in order to protect the statute of limitations applicable to the S corporation shareholder level tax for [REDACTED]'s [REDACTED] tax year, it is necessary to secure Forms 872 from the taxpayers who are subject to such tax. As is discussed below, we cannot now determine which taxpayers are actually subject to the tax. Accordingly, we suggest that you secure Forms 872 from each Trust still in existence and each Individual.

The [REDACTED] original Trusts were [REDACTED]'s shareholders during [REDACTED]. I.R.C. § 1361 authorizes a number of different types of trusts to be shareholders of S corporations. These trusts include trusts the incomes of which are taxed each year to their current beneficiaries (for example, the trusts described in I.R.C. §§ 1361(c)(2)(A)(i) and 1361(d)) and trusts not all of the incomes of which are necessarily taxed to their current beneficiaries in the year the trusts earn the income (for example, the trusts described in I.R.C. §§ 1361(c)(2)(A)(iii) and 1361(e)).

We have not reviewed the terms of the Trusts. Accordingly, we cannot now determine whether the terms applicable to each Trust during [REDACTED] resulted in all of that Trust's income being taxed to its beneficiaries (one or more of the Individuals) in [REDACTED]. Further, we do not now know whether, even if the terms of a Trust did not mandate this result, that the Trust actually distributed all of its income to its beneficiaries in sufficient time for all of the income received by it in [REDACTED] to be taxed under I.R.C. §§ 641 through 692 to the beneficiaries in [REDACTED], rather than to the Trust. Therefore, we cannot now determine whether all or any of a particular Trust's share of [REDACTED]'s income subject to the regular S corporation shareholder level tax was taxable (i) to the Trust or (ii) to the Individual or Individuals who were then such Trust's income beneficiaries.

In order to protect I.R.C. § 6501's statute of limitations on assessment, we suggest that you obtain Forms 872 from each of the Individuals and from each Trust presently in existence. Because [REDACTED] is now deceased, a Form 872 for her [REDACTED] tax year should be obtained from the authorized representative(s) of her estate (the estate's executor(s) or administrator(s)) and in conjunction therewith you should obtain evidence of such person(s) authority to act on behalf of her estate. We also suggest that Forms 872 be obtained from the [REDACTED] new Trusts into

which [REDACTED]'s Trust was divided even though these Trusts may not actually be authorized to agree to extend the I.R.C. § 6501 statute of limitations on assessment applicable to [REDACTED]'s Trust.

In addition, in order to protect the I.R.C. § 6901 statute of limitations on assessment of a transferee of a Trust for the income tax liability of the Trust, we suggest that you obtain a Form 977 from each transferee of a Trust (including each of the new Trusts into which [REDACTED]'s Trust was divided) and their transferees. Because I.R.C. § 6901(c) provides that the period of limitations on assessment of a transferee for the income tax liability of its transferor does not end until one year after the expiration of I.R.C. § 6501 period of limitations on assessment of the transferor, you may either obtain the Forms 977 now or be prepared to obtain the Forms 977 if you are unable to complete the audit of [REDACTED] sufficiently in advance of the one-year anniversary of the expiration date of the original I.R.C. § 6501 statute of limitations on assessment of the transferor for its [REDACTED] tax year. Any Form 977 obtained with respect to [REDACTED] should be obtained from the personal representative of her estate. Because I.R.C. § 6902(a) places the burden of proving transferee liability on the Service, we suggest that, at the time you obtain a Form 977 from a transferee, you also obtain a Form 2045 from the transferee.

2. Who is now authorized to execute a Form 872 on behalf of [REDACTED] for its [REDACTED] tax year?

This issue arises because either or both of the special S corporation corporate level taxes imposed by I.R.C. §§ 1374 and 1375 may have applied to [REDACTED] for its [REDACTED] tax year (and also because you may determine that [REDACTED] was not actually authorized to be an S corporation for its [REDACTED] tax year). Any extension of the statute of limitations to assess with respect to these corporate level taxes for the year [REDACTED] must be obtained from someone with authority to sign for [REDACTED].

As discussed above, because [REDACTED]'s sale of its [REDACTED] to [REDACTED] involved the sale of more than [REDACTED]% of [REDACTED]'s assets, [REDACTED] was required under [REDACTED] to commence proceedings immediately after the sale to liquidate its business under court supervision. Further, on [REDACTED], a New York court entered an Order of Dissolution with respect to [REDACTED] in part (i) directing [REDACTED] to "wind up its affairs" and (ii) stating that [REDACTED] is "hereby declared to be dissolved" and that "[u]pon the filing of a certified copy of this Order with the [REDACTED], the Company shall cease to exist." On [REDACTED] a certified copy of the Order of Dissolution was filed with [REDACTED] so that [REDACTED] ceased to exist as of that date.

Rev. Rul. 83-41, 1983-1 C.B. 349, provides that the Service generally applies the rules applicable to the execution of original returns to consents to extend the period of limitation on assessment. Thus, the rules applicable to the execution of a Form 1120S are used to determine the individuals who are authorized to sign a consent to extend the statute of limitations on assessment on behalf of an S corporation. I.R.C. § 6062 provides that a corporate income tax return must be signed by the corporation's "president, vice-president, treasurer, assistant - treasurer, chief accounting officer or any other officer duly authorized so to act." Rev. Rul. 83-41 further provides that "in states in which a dissolved corporation continues in existence for purposes of winding up its affairs, any authorized officer of the corporation may sign a consent during the period the corporation continues in existence under state law."

[REDACTED]

[illegible]

Business Corporation Law § 1006(a) provides, with respect to corporations governed by that statute, that

[a] dissolved corporation, its directors, officers and shareholders may continue to function for the purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place, except as otherwise provided in this chapter or by court order. In particular, and without limiting the generality of the foregoing:

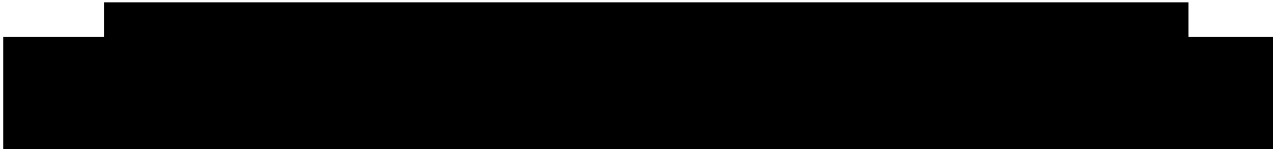
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(4) The corporation may sue or be sued in all courts and participate in actions and proceedings, whether judicial, administrative, arbitral or otherwise, in its corporate name, and process may be served by or upon it.

Business Corporation Law § 1006(b) provides, with respect to corporations governed by that statute, that

[t]he dissolution of a corporation shall not affect any remedy available to or against such corporation, its directors, officers or shareholders for any right or claim existing or any liability incurred before such dissolution, except as provided in sections 1007 (Notice to creditors; filing or barring claims) or 1008 (Jurisdiction of supreme court to supervise dissolution and liquidation).

Business Corporation Law § 1007 provides a method by which a dissolved corporation subject to that statute may give creditors notice of its dissolution in order to limit the time period in which the creditors may make claims against it. However, § 1007(c) provides that a dissolved corporation may not so limit the tax claims of the United States. Further, Business Corporation Law § 1008 does not authorize a New York court supervising a corporation's dissolution to adversely affect tax claims of the United States.



Nevertheless, we believe that the principles encompassed in the provisions of the Business Corporation Law discussed above regarding the winding up of the affairs of a dissolved corporation subject to that law also apply to a corporation, such as [REDACTED], subject to the [REDACTED]. Accordingly, consistent with §§ 1005 through 1008 of the Business Corporation Law, we believe that after its dissolution [REDACTED] may function for the purpose of winding up the affairs of the corporation in the same manner as if the dissolution had not taken place, except that consistent with [REDACTED]

Further, we believe that [REDACTED]'s winding up of its affairs includes its participation in the Service's audit of it. Accordingly, we believe that while the Service's audit is ongoing, any authorized officer of [REDACTED] may sign a Form 872 on its behalf extending the I.R.C. § 6501 statute of limitations on assessment applicable to its [REDACTED] tax year.

Nevertheless, we suggest that you not solely rely on Forms 872 signed by authorized officers on behalf of [REDACTED] and plan to obtain Forms 977 from [REDACTED]'s transferees. As noted above, I.R.C. § 6901(c) provides that the period of limitations on assessment of a transferee for the income tax liability of its transferor does not end until one year after the expiration of I.R.C. § 6501 period of limitations on assessment of the transferor. Accordingly, you may either obtain the Forms 977 now or at some time in the future prior to the expiration of the original I.R.C. § 6501 statute of limitations on assessment for [REDACTED]'s [REDACTED] tax year.

3. What language should be included in the Forms 872 to be secured from the Trusts and Individuals?

We suggest that the following language be used in the Forms 872 to be secured under I.R.C. § 6501 from the Trusts:

The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (A) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from, the [REDACTED] (E.I.N. [REDACTED]), (B) the tax basis of the taxpayer's interest(s) in the aforementioned corporation, (C) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of the taxpayer's interest in the aforementioned corporation, (D) items affected by continuing tax effects caused by

adjustments to any prior tax return, and (E) any consequential changes to other items based on any such adjustment.

Pursuant to IRM 121.2, Statute of Limitations Handbook, each Trust's consent should be accompanied by a Form 56, Notice Concerning Fiduciary Relationship, and a copy of the trust instrument. See IRM 121.2.22.6.6.

We suggest that the following language be used in the Forms 872 to be secured under I.R.C. § 6501 from the Individuals:

The amount of any deficiency assessment is to be limited to that resulting from any adjustment to: (A) the taxpayer's distributive share of any item of income, gain, loss, deduction, or credit of, or distribution from, any trust owning at any time during the calendar year [REDACTED] any shares of the [REDACTED] (E.I.N. [REDACTED]), (B) the tax basis of the taxpayer's interest(s) in any such aforementioned trust, (C) any gain or loss (or the character or timing thereof) realized upon the sale or exchange, abandonment, or other disposition of the taxpayer's interest in any such aforementioned trust, (D) items affected by continuing tax effects caused by adjustments to any prior tax return, and (E) any consequential changes to other items based on any such adjustment.

While we recommend this language be used for the consents to be obtained from the Individuals under I.R.C. § 6501, we recognize that it does not restrict the extension of the statutes of limitations on assessments to only those assessments related to adjustments to [REDACTED]'s [REDACTED] Tax Year. Instead, this language restricts the extension to assessments related to adjustments to the Trusts' incomes, whether or not those changes are related to adjustments to [REDACTED]'s [REDACTED] Tax Year.

With respect to each Form 872, the restrictive language should be typed on the consent in the space immediately below the printed text.

PROCEDURAL CONSIDERATIONS

Please note that Section 3461 of the I.R.S. Restructuring and Reform Act of 1998, codified in I.R.C. § 6501(c)(4)(B), requires the Service, each time that it requests a taxpayer to

extend the limitations period, to advise the taxpayer of the right (i) to refuse to extend the statute of limitations on assessment, or, in the alternative, (ii) to limit an extension to particular issues or for specific periods of time,. To satisfy this requirement, you may provide Publication 1035, "Extending the Tax Assessment Period," to the taxpayers when you solicit the consents. Alternatively, you may advise the taxpayers orally or in some other written form of the I.R.C. § 6501(c)(4)(B) requirement. In any event, you should document your actions in this regard in the case files.

In addition to the recommendations made herein, we further recommend that you pay strict attention to the rules set forth in the IRM. Specifically, IRM, Handbook No. 121.22.3, requires use of Letter 907(DO) to solicit a Form 872 as well as Letter 928(DO) as a follow-up letter to Letter 907(DO). Dated copies of both letters should be retained in the case file(s) as directed. When the signed Forms 872 are received from the taxpayers, the responsible manager should promptly sign and date them in accordance with Treasury Regulation § 301.6501(c)-1(d) and IRM, Handbook No. 121.2.22.5.10. The manager must also update the respective statutes of limitations in the continuous case management statute control files and properly annotate Form 895 or equivalent. See IRM, Handbook No. 121.2.22.5.11(1)(g). In the event a Form 872 becomes separated from the file or lost, these other documents would become invaluable to establish the agreement.

Also, if you seek a Form 872 from an Individual who filed a joint federal income tax return in [REDACTED], you must also secure a Form 872 from the other person who signed such return.

With respect to transferee liability, I.R.C. § 6902(a) places the burden of proving transferee liability on the Service. Accordingly, Forms 2045 (Transferee Agreement), acknowledging that [REDACTED], [REDACTED]'s Trust and the two new Trusts into which [REDACTED]'s Trust was divided should be secured at the same time any Forms 977 are secured from those taxpayers.

This advice relates solely to the facts of this case and should not be used or applied to the facts of any other case. If you have any questions concerning this memorandum, please contact Joseph W. Fogelson at (212) 264-1595, ext. 224.

ROLAND BARRAL
Area Counsel
(Area 1:Financial Services
and Health Care)

By: _____
JOSEPH W. FOGELSON
Senior Attorney